



## UNITED STATES PATENT AND TRADEMARK OFFICE

10 SEP 2010

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

FOLEY AND LARDNER LLP  
SUITE 500  
3000 K STREET NW  
WASHINGTON DC 20007

In re Application of :  
HOFMEISTER, Robert, et al. :  
Application No. 10/572,740 : DECISION ON PETITION  
Filed: 15 October 2004 :  
Attorney Docket No. 028622-0148 :

This is a decision on the petition under 37 CFR § 1.78(a)(3), filed 18 May 2010, to accept an unintentionally delayed claim under 35 U.S.C. § 119(a) to European application no. 03023581.6.

The petition is **DISMISSED AS MOOT.**

The petition procedure under 37 CFR 1.78(a)(3) is only applicable to domestic benefit claims; it is not applicable to foreign priority claims. Foreign priority in a U.S. national phase application is governed by 35 U.S.C. 365(b) and 37 CFR 1.55. In the present case, foreign priority to EP 03023581.6. was timely claimed in the international phase, as evident by its inclusion on the front page of the published international application.

It is noted that U.S. regulations require that the foreign priority claim be listed on either the oath/declaration or application data sheet (ADS). See 37 CFR 1.63(c). While the petition was accompanied by a supplemental ADS claiming priority of the European patent application, the ADS was not signed in accordance with 37 CFR 1.33. Nor does the declaration include the priority claim. Applicant is advised to correct this matter.

Any questions concerning this decision on petition may be directed to Erin Thomson at (571) 272-3292. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

The \$1410 petition fee will be refunded to petitioner's deposit account in due course.

/Boris Milef/

Boris Milef  
PCT Legal Examiner  
PCT LegalAdministration